Supreme Court, U.S.
FILED
JUN 5 1985
ALEXANDER L. STEVAS
CLERK

84-1897

NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

MORETON ROLLESTON, JR.,

Petitioner,

v.

SEA ISLAND PROPERTIES, INC., et al,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

Moreton Rolleston, Jr.
2604 First National Bank Twr.
Atlanta, Georgia 30383
(404) 658-1228

Attorney for Petitioner

53pp

QUESTIONS PRESENTED FOR REVIEW

1. Where a developer subdivides most of an island fronting on the Atlantic Ocean and lays out streets which run to the soft sand and foreshore of the island, which is not subdivided, and where the developer erects "No Trespass" signs at the end of the streets, is not the developer illegally excluding the general public from the beach area of the island?

2. In a subdivision as described above, does not a beach front lot owner acquire an easement right to use all of the beach to such an extent that the building of rock seawalls on said beach illegally interferes with the lot owners right to use the beach?

3. Where a developer lays out three parks fronting on the beach in a subdivision as described above, can the developer later sell the parks and deprive the public of their use?

4. Where a developer lays out a road on a subdivision plat between beach front lots and the ocean, does not the owner of a beach front lot acquire title to the road, subject to the rights of ingress and egress of other lot owners?

5. When a person dies without heirs and without a will and there is no administration of the estate, his real property escheats to the State in which it is located. The question is: When does escheat occur?

STATUTES AND AUTHORITIES

	Page
1. Official Code of Georgia, Ann. , §44-5-190	4
2. State of Georgia v. Ashmore,et al, 236 Ga. 401 (1976)	7

OTHER PARTIES

Parties who are not listed in the caption of this case are:

(1) William Benedict

(2) Colquitt Carter

TABLE OF CONTENTS

		Page
1.	Questions Presented For Review	i
2.	Statutes and Authorities	iii
3.	Other Parties	iv
4.	Petition for Writ of Certiorari	1
5.	Jurisdiction	4
6.	Statement of Case	5
7.	Appendix	A 1
8.	Appendix	B 2

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1985

MORETON ROLLESTON, JR.,

Petitioner,

v.

SEA ISLAND PROPERTIES, INC., et al

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF GEORGIA

Petitioner, Moreton Rolleston, Jr., respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of Georgia entered in this case on March 15, 1985.

Motion for Re-hearing was denied March 28, 1985.

OPINION BELOW

The Opinion of the Supreme Court has not been reported. The Opinion dated March 15, 1985 and the Opinion on the Motion for Re-hearing dated March 28, 1985 are set forth in the Appendix in full.

The case was appealed to the Georgia Supreme Court on the rulings of the lower court on Motions for Summary Judgment. The Georgia Supreme Court held that:

1. Rolleston, as a lot owner, had no recreational easement over the soft sand beach.
2. That Rolleston, as a lot owner and as a member of the public, had not been denied access to the beach, even though the evidence is clear that Sea Island had erected the "No Trespass" signs between the ends of the street and the soft sand of the beach.
3. That the rock seawalls did not interfere with any easement since the Court held that

Rolleston had no recreational easement.

4. That Rolleston and the general public had abandoned the parks by not objecting to the development, whereas the evidence clearly shows that the construction of all but two houses, which were built on the park land, was started after the filing of Rolleston's complaint and with knowledge of the lawsuit.

5. That Rolleston did not acquire title to an undeveloped road adjoining his property and running the length of the beach which was laid out in the original subdivision of the island.

6. That undeveloped portions of Sea Island did not escheat to the State of Georgia even though the grantee from the Crown of Great Britian in 1768 died without heirs, without a will, and without an administration of his estate.

JURISDICTION

The opinion of the Supreme Court of Georgia was issued and entered on March 18, 1985 and its opinion on the Motion for Re-hearing was issued and entered on March 28, 1985. The jurisdiction of this Court is envoked under 28 U.S.C. Section 1257.

STATUTES INVOLVED

The Official Code of Georgia Annotated, Section 44-5-190 provides as follows:

> "Escheat results when an intestate leaves no heirs; in such a case the estate of the intestate reverts to the state. In no other case does an estate escheat."

STATEMENT OF CASE

On January 5, 1768 the Crown of Great Britian conveyed to James Mackay all of Sea Island. Sea Island is one of the barrier islands on the coast of Georgia and is roughly seven miles long and less than a mile wide. James Mackay died without heirs and there was no will probated and no administration of his estate. The complaint in the instant case alleged that the entire island escheated to the State of Georgia upon the death of James Mackay. The Georgia Supreme Court did not agree. We concede that we are estopped as to the developed parts of Sea Island, but we maintain that some 200 acres of undeveloped land and over a mile of sandy beach escheated to the State of Georgia and belongs to the State today.

There are two general theories in the various states as to when escheat occurs. One theory is that escheat occurs immediately upon the death

of the owner of real estate. The other theory is that escheat occurs after a legal hearing has established the facts to comply with the appropriate state statute. We hope that this divergence of the opinion among the state and the importance of this particular case will demand the attention of this Court.

Sea Island was first developed in 1923 by St. Simons-Long Island Company. The entire island was platted and the plat of survey designated areas for streets, parks, beaches and individual lots. St. Simons-Long Island Company sold 290 lots with reference to their plat of survey and said company also conveyed Sapelo Park and Jekyll Park to Glynn County, the county in which the property is located. After all of said conveyances, in 1926 said company conveyed the rest of Sea Island to the Sea Island Company (now Sea Island Properties, Inc.) who has been the developer since 1926. In 1929 the Sea Island Company prepared another survey of most

of Sea Island, which excluded over 200 acres of land at the north end. Their sales were made thereafter in accordance with their plat dated 1929. Sea Island Company and its successors have maintained since 1929 that the beach on Sea Island was private property owned by them. However, the Supreme Court of Georgia in the case of State of Georgia vs. Ashmore, 236 Ga. 401, in 1976, held that the State of Georgia owned the beaches of Georgia below the mean high water mark.

For many years the Sea Island Company has excluded the public from the beach. The evidence in the trial court contained photographs of "No Trespass" signs which in recent years the Sea Island Company had put at the end of each street leading to the beach and these signs have effectively excluded the general public from the beach on Sea Island. The original complaint brought by this Petitioner was brought in his capacity as an owner of a beach front lot on Sea Island and as a member of the general public.

Your petitioner alleged that he acquired an easement over the soft sand which is located between the platted lots and the Atlantic Ocean and that he has an easement to use the soft sand in this area and that he has a right as a member of the general public to use the public beach below the mean water mark. Sea Island Properties, Inc. has permitted the construction of rock seawalls in front of most of the beach lots in the Sea Island Subdivision. The Department of Natural Resources of the State of Georgia has issued permits for said seawalls. The Supreme Court of Georgia has held that the seawalls are partly on the soft sand and partly on the hard sand below mean low water mark. These rock seawalls, ten to twenty feet in heigth, interfere with the use of the beach and interfere with access to the beach because they are constructed across the streets which deadend at the beach property.

Sapelo Park and Jekyll Park were laid out on the plat prepared by the original developer in 1923 and also on the plat prepared by Sea Island Company in 1929. Both parks were conveyed by the original developer in 1923 to Glynn County. On September 6, 1951 Glynn County conveyed both parks to Sea Island Company. When the original complaint in this suit was filed, there was one house located on Jekyll Park on land sold by Sea Island Company to the owner of the house. Also at the same time there was one house located on Sapelo Park and one house whose foundations had been partially laid. These two structures were on land sold by Sea Island Company. When the original complaint was filed, the undeveloped portions of Sapelo Park and Jekyll Park were larger than three football fields. Both parks fronted on the Atlantic Ocean as they were laid out in both subdivision plats. We acknowledge that we are estopped to complain about the

construction of the two houses which had been built prior to the filing of the original complaint in this lawsuit. Those who built houses thereafter did so with actual knowledge as well as constructive knowledge of this complaint and proceeded with their construction at their risk. As a lot owner in the subdivision and as a member of the general public your petitioner contends that he has a right to continue to use these two parks as they existed at the time of the filing of the complaint.

On the 1923 plat of the original developer and on the 1929 plat of Sea Island Company there was described a street, sixty feet in width, along the entire subdivision, adjoining all the beach lots and lying between the beach lots and the Atlantic Ocean. The rulings of the courts in most of the states hold that such a lot owner acquires title to the adjacant street subject to the right of other lot owners for egress and ingress. The Supreme Court of Georgia in this case held that

your petitioner did not own the street in front of his lot.

We submit that this Court can take judicial notice of the following:

(1) That the population growth in the United States along the southeastern coast in recent years has been greater than most other parts of the country.

(2) That over a long period of years the east coast of the United States has been subject to severe storms and hurricanes and the west coast has been subject to severe erosion also.

(3) That Congress has recognized these facts by requiring local governments to adopt building codes designed to make buildings more able to withstand severe storms and to protect lives as a condition precedent to the issuance of Emergency Flood Insurance for buildings along the coast.

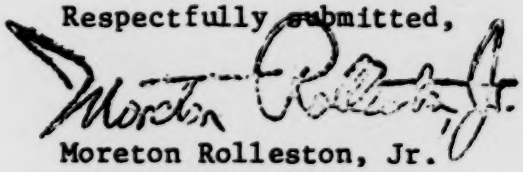
(4) That the public has an overwhelming interest in the use of public beaches and is

entitled to have access to such beaches legally protected.

We submit that as an outgrowth of common law and as a desirable national policy, the beaches of all the states fronting on the Atlantic Ocean, the Pacific Ocean and the Gulf of Mexico belong to the individual states in trust for the general public, and it should be so declared.

The issues presented by this petition were first raised in the original complaint filed in the Superior Court of Glynn County, Georgia, and being Civil Action No. 22060 in that Court.

Respectfully submitted,



Moreton Rolleston, Jr.
Attorney for Petitioner

2604 First National Bank Tower
Atlanta, Georgia 30383
(404) 658-1228

APPENDIX

APPENDIX A

OPINION OF THE SUPREME COURT OF GEORGIA

MORETON ROLLESTON, JR.

v.

SEA ISLAND PROPERTIES, INC., et al
Case No. 41382

Opinion filed March 15, 1985
Not reported at this time.

"In 1980 appellant Rolleston filed this action, seeking declaratory and injunctive relief and damages on the grounds, inter alia, that the appellees, through the construction of seawalls and other means, had interfered with his rights to recreational easements as well as easement of ingress and egress to certain parts of Sea Island. He also alleged that, due to erosion, accretion, and avulsion, he was the owner of the soft sand beach between his lots and the Atlantic

Ocean. The trial court held that the latter issue was to be decided by a jury, but granted summary judgment to appellees on the other issues. Rolleston appeals, and we affirm. The record developed in the present case consists largely of the record and transcript from the cases of Goodyear v. Trust Company Bank, 247 Ga. 281 (276 SE2d 30) (1981), and Rolleston vs. State, 245 Ga. 576 (266 SE2d 800) (1980). Most of the facts relating to this case are set out in those opinions and we will therefore only supplement them in the present case where necessary to address a particular issue.

1. Relying on Smith v. Bruce, 241 Ga. 133 (1) (244 SE2d 559) (1978), Rolleston claims that as a property owner on Sea Island he is entitled to a recreational easement to the soft sand portion of the beach. Rolleston acknowledges that in our

decision in Goodyear v. Trust Company Bank, supra, 247 Ga. at 284-285, we distinguished Smith v. Bruce, supra, and held that Goodyear, a Sea Island property owner, had not been conveyed a recreational easement to the soft sand beach. Rolleston argues, however, that Goodyear, supra, is distingquishable from the present case on the ground that the reservations contained in the Blanton and Torras plats, although applicable to the Goodyear case which was decided in 1981, expired in 1982 under the provisions of OCGA § 44-5-60 (b). We disagree. Rolleston's reliance on OCGA § 44-5-60 (b) is misplaced.[1] In Goodyear v. Trust Company, supra, 247 Ga at 285, the crucial inquiry was to look at the intent of the parties at the time of the conveyances to determine if any recreational easement had been conveyed. In that case, we found that the Torras and Blanton plats, as opposed to the High plat in Smith vs. Bruce, supra,

did not indicate any intent on the part of the developer to create a recreational easement as to the entire soft sand beach. Here, that inquiry has not changed, and we still conclude, as we did in Goodyear, supra, that no recreational easement to the soft sand beach was conveyed.

2. In this first enumeration of error Rolleston argues that the trial court erred in not declaring that the general public has the right to use certain Sea Island streets, and the extensions thereof, for ingress to and egress from the public beach below the mean high water mark. Specifically, he refers to those streets which run perpendicular to the beach and dead end at or near the beach. Rolleston contends that as a member of the general public, he has this right of ingress and egress.

For the following reasons, however, we need not decide the issue of the exact nature of the general public's right of access to the foreshore on Sea Island.[2] Here, the appellees have not denied

Rolleston access to either the soft sand beach or the foreshore. See, e.g., Goodyear v.Trust Company Bank, supra, 247 Ga. at 283. Moreover, no member of the general public who may have been denied access was a party to this action. Therefore, "[n]o facts or circumstances were alleged to show any necessity for a determination of any dispute to guide and protect the plaintiff [Rolleston], from uncertainty and insecurity with regard to the propriety of some future act or conduct which is properly incident to his alleged rights and which future action, without such directions, might reasonably jeopardize his interest." Krause v. City of Brunswick, 242 Ga. 659 (2) (251 SE2d 239) (1978). There is thus no controversy to be decided, and we decline to issue an advisory opinion on the matter. See St. John's Melkite Catholic Church vs. Commr. of Revenue, 240 Ga. 733 (1) (242 SE2d 108) (1978).

3. Since Rolleston did not acquire a recreational easement to the soft sand beach, and since he has not been denied access to the soft sand beach or to the foreshore, we find no merit

to his seventh enumeration of error, in which he contends that the trial court erred in not concluding that the seawalls interfered with his asserted easement rights as a matter of law.

4. Rolleston makes two arguments with regard to three areas of Sea Island designated on the Blanton plat as Sapelo, Jekyll, and Long Island Parks. One contention is that these parks are public parks, which he, as a member of the general public, has a right to use. Rolleston's other contention is that, as an owner of property conveyed pursuant to the Blanton plat, he acquired an easement by grant over these parks.

Between 1923 and 1926 the St. Simons-Long Island Company conveyed approximately 290 lots, including lots 1072 and 1073, which are now owned by Rolleston. It also conveyed Sapelo and Jekyll Parks to Glynn County on October 16, 1923. These lots were sold with reference to the Blanton plat. In March 1928 the Sea Island Company (the St. Simon-Long Island Company's successor) acquired

ownership of all of Sea Island, except the lots and parks (Sapelo and Jekyll) which had been previously conveyed by its predecessors in title. The Torras plat, prepared for the Sea Island Company, continued to show the existence of Sapelo and Jekyll Parks, but the area designated as Long Island Park on the Blanton plat was not designated as such on the Torras plat; however, a triangular area in its vicinity was designated a "park". In 1951 Glynn County conveyed back to the Sea Island Company both Jekyll and Sapelo Parks. In exchange, the county received property located on St. Simons Island which it has developed into Massengale Park.

a. Assumning that Rolleston and his predecessors in title acquired an easement to the parks in question, see Smith v. Bruce 133 (1) (244 SE2d 559) (1978); Walker v. Duncan, 236 Ga. 331 (223 SE2d 675) (1976), we find, nevertheless that Rolleston is estopped from asserting this right.

An easement may be extinguished by estoppel if the owner of the servient tenement acts inconsistently with the continued existence of the easement, and such action is taken in reasonable reliance upon conduct of the dominant owner evidencing an intent on the part of the dominant owner not to make use of the servient tenement in the future. Restatement of the Law, Property, § 505 (1944); Powell on Real Property, Vol. 3, § 425 (1984). The other important factors are whether the owner of the dominant tenement might reasonabley have foreseen the servient owner's reliance and consequent actions, and whether the restoration of the easement to the dominant owner would cause unreasonable harm to the owner of the servient tenement. Restatement of the Law, Property, supra, §505, Powell, supra, § 425.

In the instant case, Jekyll and Sapelo Parks have never been used by Rolleston, his predecessors

in title, or other property owners of Sea Island. Sometime after 1951 the Sea Island Company began to subdivide Jekyll Park for the purpose of development, and more recently has done so with Sapelo Park. It is apparent that it did so in reliance upon the property owners' conduct. All the lots within these two parks have now been sold; Jekyll Park is now fully developed with houses and landscaping on each lot, and all but several lots in Sapelo Park have had homes built on them. Much of this development was submitted to and approved by the Glynn County Zoning Commission. All this occurred while the property owners, who presumably witnessed this development, and who could have reasonably foreseen the reliance on their conduct, sat idely by. Moreover, under the circumstances presented here, it would be unreasonable to restore to Rolleston and other property owners the use

authorized by the easement. Many persons have acquired lots, built homes, and landscaped their property. To restore the recreational easement sought to be imposed by Rolleston would place an unreasonable hardship on them. See Restatement of the Law Property, supra § 505, Comment f; Picconi v. Carlin, 123 A.2d 87 (3) (1956).

For the above reasons, we find that, as a matter of law, the trial court correctly granted summary judgment to the appellees on this issue.

b. Rolleston also contends that the Sea Island Company dedicated Jekyll and Sapelo Parks to public use, and that he, as a member of the general public, has a recreational easement in these parks.

It is clear that the Sea Island Company's predecessors in title expressly dedicated Jekyll and Sapelo Parks to the public use by designating these areas as parks on the Blanton

Plat and by conveying the land to Glynn County by deed in 1923. Smith v. State, 248 Ga. 154, 159 (282 SE2d 76) (1991). We also find that the conveyance to Glynn County constituted public acceptance of the land. See Smith v. State, supra, 248 Ga. at 158.

Jekyll and Sapelo Parks, however, were not used by the public up to 1951, at which time the county reconveyed the parks to the Sea Island Company. Moreover, following that conveyance, no member of the public has attempted to use the parks, or objected to the Sea Island Company's development thereof. As has already been noted, all the lots in these parks have been sold, and houses have been built on all but a few. Under these circumstances, the public has clearly abandoned any easements it may have had. OCGA § 44-9-6.

c. Rolleston further alleges that he acquired an easement to Long Island Park as a property owner and also as a member of the general public. Since 1923, on the area designated as Long Island Park on the Blanton Plat, the Sea Island Company and its predecessors in title have constructed a beach club, a gazebo, offices retail shops, two swimming pools, shurbs, walk-ways, and paved areas. In the trial court Rolleston sought declaratory relief to the effect that he was entitled to use the areas of Long Island Park which had not been developed. There is no evidence, however, that Rolleston has been denied access to or the use of those areas. Absent such evidence, we decline to address this contention. See Krause v. City of Brunswick, supra, 242 Ga. at 661.

5. Rolleston contends that the trial court erred in not concluding that he owns the western one-half of an area designated on the Blanton plat as "Ocean Avenue," which was

shown on that plat as abutting his property on the east, and the eastern one-half of Ribault Lane, which abuts his property on the west.

"'According to the better authorities, the bounding of a tract by the edge or margin of a road will pass the fee to the middle line of the road when the vendor owns the fee on both sides.'" State of Georgia v. Ashmore, 236 Ga. 401, 414 (224 SE2d 334) (1976) (quoting Johnson & Co. v. Arnold, 91 Ga 659, 667 (18 SE 370) (1893). Pursuant to this rule, Rolleston owns to the centerline of Ribault Lane, subject to the easement rights of other lot owners, see Owens Hardward Co. v. Walters, 210 Ga. 321 (1) (80 SE2d 285) (1954), and the trial court erred in not so holding.

6. However, a more difficult problem is presented with regard to "Ocean Avenue", which on the Blanton plat consisted of the area

between the eastern property lines of the beach lots and the Atlantic Ocean. We find the reasons underlying the rule in Johnson, supra, 91 Ga., and therefore the rule itself, to be inapplicable to the instant case. The Johnson rule is based on the theory that the parties to the conveyance generally intend that the grantee obtain title to a streets designated as bounding his land. Johnson, supra, at 666-667.

Here, however, Sea Island Company's predecessor in title, by express language on the Blanton plat, reserved the title and right to control the area designated as Ocean Avenue. "That which is material and certain in a description prevails over that which is less material and certain." Harrison v. Durham, 210 Ga. 187 (5) (78 SE2d 482) (1953). We find that the express reservation of title

to the entire beach in the plat should control over the general designation of the beach as "Ocean Avenue." This is especially true since in view of the fact that "Ocean Avenue" encompassed the soft sand beach and the foreshore, it could not reasonably be concluded that a road was intended to cover this entire area.

For the foregoing reasons, we now conclude that the deeds in Rolleston's chain of title did not convey title to the centerline of "Ocean Avenue."[3] This conclusion is consistent with our holding in Goodyear, supra, 247 Ga. at 285, that the reservation of title in the Blanton plat meant that no recreational easement to the soft sand beach was conveyed.

Judgment affirmed and reversed in part as set forth in division 5. Hill, C. J., Clarke, Smith, Gregory, and Weltner, J.J., and Judge Curtis V. Tillman concur. Marshall, P.J., disqualified.

ENDNOTES

1. OCGA § 44-5-60 (b) is clearly inapplicable to the reservation of title in the Blanton plat and Torras plats, see Hartley v. Overstreet, 253 Ga. 136, 137 (SEd) (1984), and we need not decide whether OCGA §44-5-60 (b) applies to the reservation in the Blanton and Torras plats of the right to control the use of the soft sand beach.

2. As to the state's ownership of and the public's general right of access to the foreshore, see State of Georgia v. Ashmore, 236 Ga, 401 (224 SE2d 334) (1976); Lines vs.State 245 Ga. 390, 397 (264 SE2d 891) (1980); Goodyear v. Trust Company Bank, Supra, 247 Ga. at 285.

3. In State v. Ashmore, 236 Ga. 401 (224 SE2d 334) (1978), we found that the foreshore belonged to the state. Therefore, Ocean Avenue could now only encompass the soft sand beach; however, for purposes of discerning the intent of the parties at the time of the conveyance, we look to the designation of Ocean Avenue as it then existed.

APPENDIX B

OPINION OF THE SUPREME COURT OF GEORGIA

MORETON ROLLESTON, JR.

v.

SEA ISLAND PROPERTIES, INC., et al

Case No. 41382

Opinion filed March 28, 1985
Not Reported at this time.

"Please substitute the attached pages six, seven, eight, and nine for pages, six, seven, and eight of the opinion you currently have."

"thereof. As has already been noted, all of the lots in these parks have been sold, and houses have been built on all but a few. Under these circumstance, the public has clearly abandoned any easements it may have had. OCGA § 44-9-6.

c. Rolleston further alleges that he acquired an easement to Long Island Park as a property owner and also as a member of the general public. Since 1923, on the area designated as Long Island Park on the Blanton Plat, the Sea Island Company and its predecessors in title have constructed a beach club, a gazebo, offices, retail shops, two swimming pools, shrubs, walkways, and paved areas. In the trial court Rolleston sought declaratory relief to the effect that he was entitled to use the areas of Long Island Park which had not been developed. There is no evidence, however, that Rolleston has been denied access to or the use of those areas. Absent such evidence, we decline to address this contention. See Krause v. City of Brunswick, supra, 242 Ga. at 661.

5. Rolleston contends that the trial court erred in not concluding that he owns the western

one-half of an area designated on the Blanton plat as "Ocean Avenue", which was shown on that plat as abutting his property on the east, and the eastern one-half of Ribault Lane, which abuts his property on the west.

"'According to the better authorities, the bounding of a tract by the edge or margin of a road will pass the fee to the middle line of the road when the vendor owns the fee on both sides.'" State of Georgia v. Ashmore, 236 Ga. 401, 414 (224 SE2d 334) (1976) (quoting Johnson & Co. v. Arnold, 91 Ga 659,667 (18 SE 370) (1893). With regard to Ribault Lane, there is no controversy in this suit over the title thereto. We therefore decline to address this issue. Krause v. City of Brunswick,supra, 242 Ga. at 161.

However, a more difficult problem is presented with regard to "Ocean Avenue", which on the Blanton plat consisted of the area

between the eastern property lines of the beach lots and the Atlantic Ocean. We find the reasons underlying the rule in Johnson, supra, 91 Ga., and therefore the rule itself, to be inapplicable to the instant case. The Johnson rule is based on the theory that the parties to the conveyance generally intend that the grantee obtain title to a street designated as bounding his land. Johnson, supra, at 666-667.

Here, however, Sea Island Company's predecessor in title, by express language on the Blanton plat, reserved the title and right to control the area designated as Ocean Avenue. "That which is material and certain in a description prevails over that which is less material and certain." Harrison v. Durham, 210 Ga. 187 (5) (78 SE2d 482) (1953). We find that the express reservation of title to the

entire beach in the plat should control over the general designation of the beach as "Ocean Avenue." This is especially true since, in view of the fact that "Ocean Avenue" encompassed the soft sand beach and the foreshore, it could not reasonable be concluded that a road was intended to cover this entire area

For the foregoing reasons, we now conclude that the deeds in Rolleston's chain of title did not convey title to the centerline of "Ocean Avenue"."[3] This conclusion is consistent with our holding in Goodyear, supra, 247 Ga. at 285, that the reservation of title in the Blanton plat meant that no recreational easement to the soft sand beach was conveyed.

6. In his sixth enumeration of error, Rolleston argues that all of the land constituting Sea Island escheated to the state and that, therefore, seawalls constructed on the soft

sand beach must be removed because they were built by people who did not own the adjacant land. Goodyear v. Trust Company Bank, supra, 247 Ga. at 285-286, however, controls this issue adversly to Rolleston.

Judgment affirmed, Hill, C.J., Clarke, Smith Gregory, and Weltner, J.J., and Judge Curtis V. Tillman concur. Marshall, P.J., disqualified.

ENDNOTES

1. OCGA § 44-5-60 (b) is clearly inapplicable to the reservation of title in the Blanton and Torras plats, see Hartley v. Overstreet, 253 Ga. 136, 137 (SE 2d) (1984), and we need not decide whether OCGA § 44-5-60 (b) applies to the reservation in the Blanton and Torras plats of the right to control the use of the soft sand beach.

2. As to the state's ownership of and the public's general right of access to the foreshore, see State of Georgia v Ashmore, 236 Ga. 401 (224 SE2d 334) (1976); Lines v. State, 245 Ga. 390, 397 (264 SE2d 891) (1980); Goodyear v. Trust Company Bank, supra, 247 Ga. at 285.

3. In State v. Ashmore, 236 Ga. 401 (224 SE 2d 334) (1978), we found that the foreshore belonged to the State. Therefore, Ocean Avenue could now only encompass the soft sand beach; however, for purposes of discerning the intent of the parties at the time of the conveyance, we look to the designation of Ocean Avenue as it then existed.

CERTIFICATE OF SERVICE

This is to certify that I have this day served copies of the foregoing "Petition for a Writ of Certiorari to the Supreme Court of Georgia" upon counsel for all parties by placing copies in the United States Mail, postage prepaid, properly addressed, as follows:

James Gilbert, Jr.
777 Gloucester St.
Brunswick, Georgia 31520

J. Thomas Welchel
777 Gloucester Street
Brunswick, Georgia 31520

Thomas G. Benedict
DeKalb Federal Building
Decatur, Georgia

Colquitt Carter
First National Bank Tower
Atlanta, Georgia 30383

This 4th day of June, 1985.

Moreton Rolleston, Jr.